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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

JENNIE QUAN, individually and as
successor in interest to BENJAMIN
CHIN, deceased,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES;
MARISOL BARAJAS; HECTOR
VAZQUEZ; and DOES 3-10, inclusive,

Defendants.

Case No. 2:24-cv-04805-MCS-KS

Assigned to:

Hon Mark C. Scarsi

Hon. Mag. Judge Karen L. Stevenson

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR
PARTIAL SUMMARY JUDGMENT**

[Plaintiff's Statement of Genuine
Disputes; Objections to Defendants'
Separate Statement of Uncontroverted
Facts; Additional Uncontroverted Facts;
Declaration of Hang D. Le and exhibits
thereto; and Declaration of Jeff Noble
filed concurrently herewith]

Date: November 3, 2025

Time: 9:00 a.m.

Ctrm: 7C

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 19, 2023, County of Los Angeles Sheriff's Department Deputy
4 Marisol Barajas ("Barajas") and Detective Hector Vazquez ("Vazquez") shot and
5 killed Benjamin Chin ("Chin"). The officers fired a combined total of five shots—
6 all separate volleys. The shooting was captured on several officer-worn body
7 cameras and showed that although Chin was in possession of a rifle slung over his
8 body at the time of the shooting, Chin never touched the rifle, never manipulated the
9 rifle, never raised the rifle, nor pointed the rifle; in short, Chin never made any
10 threatening or furtive movement. The video and forensic evidence, along with
11 Barajas's observations, show that the deputies' use of deadly force was
12 unreasonable because Chin never posed an immediate or imminent threat of death or
13 serious bodily injury.

14 Defendants now move for summary judgment or partial summary judgment
15 on all of Plaintiff's claims. In light of the uncontroverted video and forensic
16 evidence, and the reasons discussed below, the Court should deny Defendants'
17 motion.¹

18 **II. STATEMENT OF FACTS**

19 **A. The Deputies Receive a Call for Service**

20 Vazquez received a call for service regarding a male Asian, wearing a bullet
21 proof vest, walking down the street with an assault-style rifle, and firing off rounds
22 into the air. Plaintiff's Additional Uncontroverted Fact "PAUF" 94-95. Vazquez
23 also received information that someone had been stabbed but he did not know the
24 severity of it. PAUF 96. The only information that was transmitted over the radio
25

26 _____
27 ¹ Plaintiff voluntarily dismisses/abandons her Denial of Medical Care claim (second
28 claim for relief) and her Municipal Liability claims (third, fourth, and fifth claims
for relief).

1 that related the stabbing victim to the incident was that the victim was in the area
2 where the person with the gun was. PAUF 97.

3 Barajas started to panic when she heard the priority call. PAUF 98. When she
4 heard that there was a stabbing victim and shots had been fired, she became
5 extremely nervous and started to panic. PAUF 99. Neither Vazquez nor Barajas had
6 ever seen Chin before the day of the incident. PAUF 100. Neither Vazquez nor
7 Barajas had any information regarding Chin's background, including Chin's
8 criminal history or any information as to whether Chin was under the influence of
9 drugs or alcohol. PAUF 101.

10 B. The Deputies Encounter Decedent

11 When Vazquez encountered an Asian female, later identified as Plaintiff
12 Jennie Quan, Vazquez saw blood on Plaintiff's hands but did not know the source of
13 the blood. PAUF 102. When Vazquez was talking to Plaintiff, he could not tell
14 whether or not she had been stabbed—he just saw blood. PAUF 103. Vazquez did
15 not ask Plaintiff if she needed medical attention nor did he call medical attention for
16 her. 104. Plaintiff told Vazquez "Don't hurt him" and "Don't shoot him" a few
17 times. PAUF 105. At around the time Plaintiff told Vazquez, "Don't hurt him" or
18 "Don't shoot him," Vazquez saw Chin. PAUF 106.

19 Vazquez first saw Chin in Crooked Creek, facing houses, and there did not
20 appear to be any people around. PAUF 107. Vazquez observed that Chin was
21 wearing a vest and had a rifle slung over his right side. PAUF 108. Vazquez decided
22 to get his County-issued patrol shotgun, which is a pump shotgun that requires the
23 user the pump the shotgun to eject a casing and load the next round. PAUF 109-110.
24 A casing is ejected from the shotgun after a shot has occurred, in order to load the
25 next round. PAUF 111. Vazquez then observed Chin walk eastbound towards
26 Diamond Bar Boulevard. PAUF 112. Chin walked approximately half a block with
27 the rifle slung over his right side the entire time before he got to Diamond Bar
28

1 Boulevard. PAUF 113. Reaching Diamond Bar Boulevard, Chin then made a turn
2 and proceeded northbound for approximately 20 to 30 feet. PAUF 114-115. He
3 walked at a slow, steady pace the entire time on Diamond Bar Boulevard. PAUF
4 116.

5 Vazquez conceded that he could not shoot Chin for simply walking away
6 PAUF 117. Vazquez conceded that based on his training and the totality of the
7 circumstances, he could not shoot Chin as a fleeing felon and could only shoot him
8 if Chin posed an immediate or imminent threat of death or serious bodily injury.

9 PAUF 118. Vazquez told Deputy Bronowicki to pull up with his vehicle so that he
10 could continue to provide cover to Vazquez and Bronowicki complied. PAUF 119.
11 One of the reasons Vazquez wanted Bronowicki to bring the car up was to provide
12 Vazquez with cover. PAUF 120. Vazquez then left cover and ran on foot away from
13 Bronowicki's vehicle, towards the north sidewalk of Crooked Creek. PAUF 121.

14 Barajas was driving southbound on Diamond Bar Boulevard before she saw
15 Chin walking northbound on the same street and stopped her car and got out when
16 she saw him. PAUF 122-23. Chin was in the number one southbound lane on
17 Diamond Bar Boulevard when Barajas encountered him and Barajas stopped her
18 vehicle in the number two lane. PAUF 124-25. Barajas experienced additional panic
19 when she saw Chin. PAUF 126. Barajas also observed a firearm in a slung manner
20 on Chin's right side with the barrel pointed down. PAUF 127-28. Barajas claims she
21 exited her vehicle as soon as she saw Chin. PAUF 129. Chin had a blank stare on his
22 face. PAUF 132. Barajas started to panic as Chin began walking in her direction.
23 PAUF 131.

24 C. The Deputies Use Excessive and Unreasonable Force Against Decedent

25 Barajas fired the first shot. PAUF 133. Chin was walking northbound on
26 Diamond Bar Boulevard while Barajas was positioned behind her driver's side door
27 when she fired her first shot. PAUF 134-35. Chin was approximately 20 to 25 feet
28

1 from Barajas's patrol vehicle when she fired her first shot. PAUF 136. Barajas was
2 aiming towards Chin's waistline when she fired her first shot because she was trying
3 to aim at a part that was not covered by the vest he was wearing. PAUF 137. The
4 gun on Chin was still pointed down when Barajas fired her first shot. PAUF 138.
5 Vazquez conceded that based on his training, he could not shoot Chin for walking
6 away at the time he heard the first shot because there was not enough to justify the
7 use of deadly force as Chin had only fired rounds in the air and Vazquez did not
8 know the extent of the assault Chin had previously committed. PAUF 139. Vazquez
9 thought Chin possibly had been struck by the first shot because he saw Chin flinch
10 by bending forward slightly before coming back up. PAUF 140-41. Other than a few
11 cars on Diamond Bar, there was nobody outside. PAUF 142. After Barajas' first
12 shot, she started panicking even more. PAUF 143.

13 Chin's right arm was positioned at an angle with his upper arm angling
14 towards his back, his elbow behind his back, and his forearm angling toward his
15 front the entire time he was walking down Diamond Bar Boulevard, and his right
16 arm did not change positions the entire time. PAUF 144, 153. Additionally,
17 approximately six seconds after Barajas' first shot, Vazquez discharged his shotgun
18 at Chin. PAUF 145. After Barajas's first shot, Chin took four small, slow steps
19 forward before Vazquez's first shot, followed immediately by Barajas's second shot.
20 PAUF 146. Vazquez was 30 to 40 feet from Chin and Chin was facing northbound
21 at the time Vazquez first fired. PAUF 147-48. When Vazquez fired his first shot, he
22 was aiming at the left side of Chin's torso, and Vazquez was able to see Chin's
23 back. PAUF 150-51. Chin was facing northbound and Vazquez was firing in a
24 slightly northeast direction. PAUF 152. Vazquez claims he could tell that his first
25 shot struck the middle left, rear area of Chin's vest. PAUF 149.

26 Barajas fired an additional shot immediately after Vazquez's first shot and
27 approximately seven seconds after her first shot. PAUF 154-55. Barajas fired
28 another shot approximately two seconds after her second shot. PAUF 155. The gun

1 on Chin was still pointed down when Barajas fired those shots. PAUF 157. Barajas
2 could tell that other shots were coming from her right side and she knew that there
3 was another deputy positioned to her right. PAUF 165. Barajas saw Chin react to the
4 gunshots in between her' shots and Vazquez's shot as she saw Chin's posture bend
5 slightly forward and Chin was no longer upright. PAUF 166-67. Chin was going to
6 the ground in a slow manner. PAUF 168. A shot was fired after Chin's posture bent
7 forward as a reaction of Barajas's shots. PAUF 166, 167, 179.

8 Chin was facing northbound and was not rotating towards Vazquez at the
9 time of Vazquez's second shot. PAUF 172. Vazquez fired his second shot
10 approximately five seconds after he fired his first shot. PAUF 173. Vazquez testified
11 that the fact that Vazquez did not have any cover was a factor in his decision to fire
12 his second shot. PAUF 174-75. Chin went to the ground soon after Vazquez's
13 second shot. PAUF 176. Chin fell onto his back, with his face looking upwards
14 towards the sky. PAUF 177. Chin fell to the ground approximately 15 to 20 feet
15 from Barajas's vehicle. PAUF 178. Vazquez got the impression that his second shot
16 struck Chin. PAUF 179. 181. At 11:45:14 on Vazquez's bodyworn camera video,
17 Chin is slightly bent over and facing northbound. PAUF 181. At 11:45:13 on
18 Barajas's bodyworn camera video, a couple of shots have already gone off and Chin
19 is facing north. PAUF 182. At 11:45:15 on Barajas's bodyworn camera, Chin is
20 somewhat bent or canted forward and he is still facing north. PAUF 183.

21 At all times while Barajas and Vazquez were on scene, Chin never pointed
22 the firearm at anyone, never raised the firearm towards anyone, and never
23 manipulated the firearm. PAUF 158-59, 161. Barajas never saw Chin holding the
24 firearm with both hands. PAUF 160. The gun was within reach of Chin but Barajas
25 never saw Chin touch the gun. PAUF 162. Additionally, neither Barajas nor
26 Vazquez ever heard Chin say anything at any time. PAUF 163-64.

27 No deputy on scene, including Barajas and Vazquez, ever gave Chin
28 commands to stop walking, to not advance towards them, or to get on the ground.

1 PAUF 170, 184, 186. No deputy on scene, including Barajas and Vazquez, ever
2 gave Chin a warning that deadly force would be used if Chin did not comply with
3 their commands. PAUF 171, 185, 187. Additionally, Vazquez conceded that had
4 Decedent just been walking northbound with the rifle slung around his neck, pointed
5 down, and had not grabbed the rifle, raised the rifle, or turned towards Vazquez with
6 the rifle, it would have been inappropriate to shoot based on his training and he
7 would have let the situation play out and try to deescalate the situation further.
8 PAUF 188.

9 Chin sustained gunshot wounds to the front of his body, just above his pubic
10 region, and lower back. PAUF 189. The gunshot wound to the front of the Chin's
11 body above his pubic region had a trajectory of left to right, front to back, and
12 downwards. PAUF 190. The gunshot wound to the lower back, which was close to
13 the middle of the back, had a trajectory of left to right, back to front, and 45-degree
14 angle upwards. PAUF 191. The trajectory of the gunshot wound to the middle of the
15 lower back is consistent Chin being bent forward at the waist and the shooter at
16 Chin's back. PAUF 192. This gunshot wound was determined to be fatal. PAUF
17 193.

18 D. The Deputies' Use of Deadly Force Against Decedent Violated Standard
19 Police Practices and Training

20 Officers are trained that there must be objective factors to justify an
21 immediate threat and that a simple statement by an officer that he or she fears for his
22 or her safety or the safety of others is insufficient. PAUF 194. Officers are trained
23 that to use deadly force, the threat of death or serious bodily injury must be
24 immediate or imminent. PAUF 195. Officers are trained that a threat of death or
25 serious bodily injury is "imminent" when, based on the totality of the circumstances
26 known to the officer, a reasonable officer in the same situation would believe that a
27 person has the present ability, opportunity, and apparent intent to immediately cause
28 serious bodily injury to the peace officer or another person. PAUF 196. Officers are

1 trained that an imminent harm is not merely a fear of future harm, but one that, from
2 appearances, must be instantly confronted and addressed. PAUF 197. Officers are
3 trained to control their emotions and to not panic when encountering situations
4 similar this incident. PAUF 199. Officers are trained that their subjective fear cannot
5 be a justification for the use of deadly force and that there must be objective facts
6 that show that the subject posed an immediate or imminent threat of death or serious
7 bodily injury. PAUF 200. Officers are trained that an overreaction in using force is
8 excessive force and that deadly force should only be used in an immediate defense
9 of life situation and when no other reasonable alternatives are available. PAUF 201-
10 02. Moreover, Officers are trained that they cannot shoot a person who they suspect
11 or believe to have committed a violent felony simply for fleeing, unless the officer
12 reasonably believes that the person will cause death or serious bodily injury to
13 another unless immediately apprehended. PAUF 203.

14 Thus, Plaintiff's police practices expert Jeff Noble opined that under the facts
15 of this case, deadly force would not be justified against Chin for his simple act of
16 walking away from officers and the information known to the officers at the time is
17 insufficient to justify the use of deadly force against Chin for walking away. PAUF
18 204. Additionally, Vazquez violated standard police practices and training when he
19 left available cover to follow Chin onto Diamond Bar Boulevard and his tactically
20 inappropriate decision to leave cover contributed to his later use of deadly force
21 against Chin, as evidenced by Vazquez's testimony that being without cover was a
22 factor in his decision to shoot at Chin. PAUF 205. Moreover, Noble opined that
23 Barajas's first, second, and third shots violated standard police practices and training
24 and a reasonably trained officer in Barajas's position would not have believed that
25 Chin posed an immediate or imminent threat of death or serious bodily injury at the
26 time of Barajas's first shot and would not have shot at all. PAUF 206, 210, 212.
27 Noble also opined that Vazquez's first and second shots violated standard police
28 practices and training and a reasonably trained officer in Vazquez's position, acting

1 pursuant to standard police practices and training, would have been aware of Chin's
2 body and arm positioning throughout the encounter and would not have believed
3 that Chin posed an immediate threat of death or serious bodily injury at the time of
4 Vazquez's first and second shot and would not have shot at all. PAUF 207, 208,
5 213.

6 Additionally, police officers are trained that they should give a warning that
7 they are prepared to use deadly force, when feasible and Vazquez and Barajas this
8 training when they failed to give Chin a warning that they were prepared to use
9 deadly force despite it being feasible to do so. PAUF 214-15. Lastly, Noble opined
10 that the deputies had other reasonable alternatives available to them to take Chin
11 into custody at the time of the shooting, including additional time and opportunity to
12 deescalate further by setting up a perimeter (as other units were on scene and on the
13 way), and utilizing less-lethal force such as the 40mm, the beanbag shotgun, or the
14 Taser in order to gain compliance. PAUF 216-17.

15 **III. LEGAL STANDARD**

16 In ruling on a motion for summary judgment, the court must view the
17 evidence and draw all reasonable inferences therefrom in the light most favorable to
18 the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970);
19 *Lake Nacimiento Ranch Co. v. San Luis Obispo Cnty.*, 841 F.2d 872, 875 (9th Cir.
20 1987). Even where the basic facts are undisputed, summary judgment should be
21 denied if reasonable minds could differ on the inferences to be drawn from those
22 facts. *Adickes*, 398 U.S. at 158-59; *Lake Nacimiento Ranch Co.*, 841 F.2d at 875.
23 "Credibility determinations, the weighing of the evidence, and the drawing of
24 legitimate inferences from the facts are jury functions, not those of a judge..."
25 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

26 "Because [the excessive force inquiry] nearly always requires a jury to sift
27 through disputed factual contentions, and to draw inferences therefrom, [the Ninth
28 Circuit] held on many occasions that summary judgment or judgment as a matter of

1 law in excessive force cases should be granted sparingly.” *Santos v. Gates*, 287 F.3d
2 846, 853 (9th Cir. 2002); *accord Liston v. Cnty. of Riverside*, 120 F.3d 965, 976
3 n.10 (9th Cir. 1997) (as amended) (“We have held repeatedly that the
4 reasonableness of force used is ordinarily a question of fact for the jury.”). “This is
5 because such cases almost always turn on a jury’s credibility determinations.” *Smith*
6 *v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). Thus, “[t]he [court] must
7 carefully examine all the evidence in the record . . . and the available physical
8 evidence, as well as any expert testimony proffered by the plaintiff, to determine
9 whether the officer’s story is internally consistent and consistent with the known
10 facts.” *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994); *accord Gonzalez v. City*
11 *of Anaheim*, 747 F.3d 789, 794-95 (9th Cir. 2014) (en banc). This includes
12 “circumstantial evidence that, if believed, would tend to discredit the police officer’s
13 story.” *Scott*, 39 F.3d at 915. Courts do “recognize that police officers are often
14 forced to make split-second judgments” but “[n]ot all errors in perception or
15 judgment . . . are reasonable.” *Torres v. City of Madera*, 648 F.3d 1119, 1124 (9th
16 Cir. 2011) (internal quotation marks and citation omitted). While courts “do not
17 judge the reasonableness of an officer’s actions ‘with the 20/20 vision of hindsight,’
18 nor does the Constitution forgive an officer’s every mistake.” *Id.*

19 **IV. THE DEPUTIES ARE NOT ENTITLED TO QUALIFIED IMMUNITY**
20 **FOR THEIR USE OF EXCESSIVE DEADLY FORCE AGAINST CHIN**

21 **A. Defendant Deputies Used Excessive Deadly Force**

22 A constitutional claim for excessive force is evaluated through the Fourth
23 Amendment’s reasonableness standard, considering “whether the officers’ actions
24 [we]re ‘objectionably reasonable’ in light of the facts and circumstances confronting
25 them.” *Graham v. Connor*, 490 U.S. 386, 397 (1989). The inquiry into the
26 reasonableness of an officer’s use of force “requires the careful balancing of ‘the
27 nature and quality of the intrusion on the individual’s Fourth Amendment interests’
28

1 against the countervailing governmental interests at stake.” *Graham*, 490 at 396.
2 “The intrusiveness of a seizure by means of deadly force is unmatched.” *Tennessee*
3 *v. Garner*, 471 U.S. 1, 9 (1985). Government interest factors to balance against the
4 type of force used include “(1) the severity of the crime at issue, (2) whether the
5 suspect poses an immediate threat to the safety of the officers or others, and (3)
6 whether he is actively resisting arrest or attempting to evade arrest by flight.”
7 *Graham*, 490 at 396.

8 *1. The First and Third Graham Factors Do Not Warrant the Use of*
9 *Deadly Force*

10 Even when a suspect has previously committed a serious crime, “a jury could
11 discount the severity of the suspect’s purported crimes when the suspect is
12 indisputably not engaged in felonious conduct when the officer arrives.” *Singh v.*
13 *City of Phoenix*, 124 F.4th 746, 752 (9th Cir. 2024) (cleaned up) (citing *S.R. Nehad*
14 *v. Browder*, 929 F.3d 1125, 1136 (9th Cir. 2019)). Here, Chin was not engaged in
15 any felony when Vazquez and Barajas encountered Chin under Plaintiffs’ facts, and
16 Chin was not engaged in any felonious conduct during any of Barajas’s and
17 Vazquez’s shots. Accordingly, the alleged crimes do not support the use of deadly
18 force. *See S.R. Nehad*, 929 F.3d at 1136 (a jury could conclude that the suspect’s
19 already completed felony of “threatening with a weapon” did not render the officer’s
20 use of deadly force reasonable because the suspect was not engaged in any such
21 conduct when the officer arrived or when he fired his weapon).

22 “Resistance . . . should not be understood as a binary state, with resistance
23 being either completely passive or active[, r]ather, it runs the gamut from the purely
24 passive protestor who simply refuses to stand, to the individual who is physically
25 assaulting the officer,” the nature of any resistance should be viewed in light of the
26 particular facts of the case. *Bryan v. MacPherson*, 630 F.3d 805, 830 (9th Cir.
27 2010). In *Smith v. City of Hemet*, the Ninth Circuit held that the plaintiff’s refusal to
28 comply with commands to remove his hands from his pockets and place them on his

1 head and his reentry into his home despite officers’ ordering otherwise were
2 “not...particularly bellicose.” 394 F.3d at 703. In *Singh v. City of Phoenix*, the Ninth
3 Circuit held that the plaintiff’s refusal to follow commands, including commands to
4 drop the knife he held and to not advance towards the officer, constituted less than
5 active resistance and did not warrant the use of deadly force. 124 F.4th at 748-49,
6 753-54. Similarly, Chin’s only resistance was his failure to obey commands to “drop
7 the gun.” The officers never gave Chin any other commands, including potential
8 commands to stop walking, stop advancing, or to get on the ground. Under
9 Plaintiffs’ facts, he was not actively resisting nor physically assaulting any of the
10 officers at the time of the use of force.

11 And as Vazquez conceded, the deputies would not be justified in shooting
12 Chin for fleeing, as the facts known to the deputies at the time did not support
13 justification for shooting a fleeing felon, Chin walked at a slow, steady pace
14 throughout the encounter, and the deputies never gave Chin any commands to stop,
15 to not advance toward anyone, or to get down on the ground. *See Calonge v. City of*
16 *San Jose*, 104 F.4th 39, 46 (9th Cir. 2024) (deadly force could not be justified by
17 decedent continuing to walk because the officers did not instruct decedent to stop so
18 his actions could not amount to fleeing arrest); *A.K.H. ex rel. Landeros v. City of*
19 *Tustin*, 837 F.3d 1005, 1009, 1012 (9th Cir. 2016) (explaining that a person is not
20 “flee[ing]” when he “continue[s] to move at about the same speed,” even when an
21 officer instructs him to “get down”).

22 2. *Chin Did Not Pose an Immediate or Imminent Threat of Death or*
23 *Serious Bodily Injury Immediately Prior to or During Any of the Shots*

24 The most important *Graham* factor is whether the suspect posed an immediate
25 threat to anyone’s safety.” *S.R. Nehad*, 929 F.3d at 1132 (citing *Mattos v. Agarano*,
26 666 F.3d 433, 441 (9th Cir. 2011)). “[T]o justify deadly force, an objective belief
27 that an imminent threat of death or serious physical harm is required.” *Price v. Sery*,
28 513 F.3d 962, 969 (9th Cir. 2008). A merely subjective belief of threat cannot justify

1 the use of force, “rather, the objectively describable totality of the circumstances
2 would have to be such as to justify the use of force,” and a sincerely held but
3 unreasonable belief is insufficient to justify the use of force. *Id.* “[A] a simple
4 statement by an officer that he fears for his safety or the safety of others is not
5 enough; there must be objective factors to justify such a concern” *Deorle v.*
6 *Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001). “A desire to resolve quickly a
7 potentially dangerous situation is not the type of governmental interest that, standing
8 alone, justifies the use of force that may cause serious injury.” *Id.*

9 Moreover, the Ninth Circuit has “held over and over that a suspect’s
10 possession of a gun does not itself justify deadly force.” *Calonge*, 104 F.4th at 48.
11 “An immediate threat might be indicated by a furtive movement, harrowing gesture,
12 or serious verbal threat.” *Id.* at 46. If a person possesses a gun but does not reach for
13 it or make some similar threatening movement, then it would clearly be
14 unreasonable for officers to shoot him. *Id.*

15 Here, Barajas’s subjective belief is insufficient to justify the use of deadly
16 force considering the objective facts. Barajas had already started the panic when she
17 first heard the priority call and panicked even more when she encountered Chin. At
18 all times during the incident, Barajas observed the rifle slung on Chin’s right side
19 with the barrel of the gun pointed down. Chin never held the rifle, never touched the
20 rifle with either hand, never manipulated the rifle, never raised the rifle, and never
21 pointed the rifle at anyone while the deputies were on scene. Moreover, the deputies
22 never heard Chin say anything, let alone make any verbal threats. Barajas contends
23 that she shot Chin because he walked towards her and a civilian vehicle while armed
24 with a rifle, but as discussed above, failure to obey commands while visibly armed
25 is not enough to justify the use of deadly force and the deputies never instructed
26 Chin to stop, to not advance towards them, or to get down onto the ground.

27 In *Calonge v. City of San Jose*, the Ninth Circuit held that the totality of the
28 circumstances did not justify the use of deadly force because, despite the decedent

1 being armed with a replica gun in his waistband that the officers reasonably believed
2 to be a real gun, the decedent never reached for his waistband or made any similar
3 furtive or threatening gesture. 104 F.4th at 46. Similarly, while the deputies could
4 see that Chin was in possession of a rifle, Barajas's testimony and the
5 uncontroverted video evidence shows that Chin never made any threatening or
6 furtive movement. The rifle remained slung on his body with the barrel pointed
7 down at all times. Chin never reached for the rifle. Accordingly, a reasonable jury
8 could find that Barajas's use of deadly force (all three shots) was unreasonable as
9 Chin did not pose an immediate threat of death or serious bodily injury immediately
10 prior to or during Barajas's shots.

11 Vazquez contends that he fired his first shot because immediately after
12 Barajas's first shot, Vazquez observed Chin bring his right arm up in a manner that
13 Vazquez believed to indicate that Chin was reaching for the rifle. He contends that
14 he fired his second shot almost immediately after his first shot because Chin was
15 turning towards him. However, "[w]hen opposing parties tell two different stories,
16 one of which is blatantly contradicted by the record, so that no reasonable jury could
17 believe it, a court should not adopt that version of the facts for purposes of ruling on
18 a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). Where
19 multiple videos capture the shooting and there are no allegations or indications that
20 the videos have been altered in any way, courts "allow the videotape[s] to speak for
21 [themselves]." *Tabares v. City of Huntington Beach*, 988 F.3d 1119, 1124 n.4 (9th
22 Cir. 2021) (quoting *Scott*, 550 U.S. at 378 & n.5). Vazquez's story is blatantly
23 contradicted by the video and forensic evidence.

24 Video from Vazquez's body-worn camera show that Chin's right arm was
25 bent at the elbow the entire time Chin was walking on Diamond Bar Boulevard—the
26 position Vazquez claims Chin's right arm only went to after Barajas's first shot that
27 led Vazquez to believe Chin was reaching for the rifle. Moreover, both Barajas's
28 and Vazquez's body-worn camera videos show that Chin never raised the rifle,

1 never turned in Vazquez's direction prior to Vazquez's second shot, and was not
2 facing Vazquez at the time of Vazquez's second shot. Instead, the videos show that
3 Vazquez's second shot occurred approximately five seconds after his first, Chin had
4 bent forward in response to Barajas's third shot, was not touching the rifle at any
5 time prior to Vazquez's second shot, and was struck in the back by Vazquez's
6 second shot. Chin sustained a gunshot wound to the middle of the lower back that is
7 consistent with Chin being bent at the waist and the shooter being behind Chin—
8 which turned out to be the fatal shot. Additionally, according to Defendants' facts,
9 Barajas allegedly stopped firing once Chin was immobilized and it is undisputed
10 that Vazquez's last shot occurred after Barajas's last shot. Vazquez conceded that if
11 Chin had simply been walking with the rifle slung over his body and pointed down,
12 and had not grabbed the rifle, raised the rifle, or turned towards Vazquez with the
13 rifle, it would have been inappropriate to shoot—exactly what Plaintiff contends
14 happened according to Barajas's testimony and the video evidence. Thus, there is
15 sufficient evidence to lead a reasonable jury to conclude that both of Vazquez's
16 shots were excessive and unreasonable under the circumstances.

17 *3. Additional Factors Weigh Against the Use of Deadly Force*

18 “In some cases, the absence of a warning or order to halt prior to deploying
19 forceful measures against a suspect may suggest that the use of force was
20 unreasonable.” *S.R. Nehad*, 929 F.3d at 1137 (citing *Deorle*, 272 F.3d at 1283-84).
21 In *S.R. Nehad v. Browder*, the Ninth Circuit determined that the officer's failure to
22 order the suspect with the knife to halt could support a conclusion that the officer's
23 use of deadly force was unreasonable. 929 F.3d at 1137. Here, Barajas claimed that
24 she shot because Chin was walking towards her and a civilian vehicle while armed
25 with a rifle, yet, Barajas never gave Chin any commands to stop, to not advance, or
26 to get onto the ground. A reasonable jury could find that the lack of sufficient
27 commands weighs against the reasonableness of her use of deadly force.
28

1 Additionally, “[t]he seemingly obvious principle that police should, if
2 possible, give warnings prior to using force is not novel, and is well known to law
3 enforcement officers.” *S.R. Nehad*, 929 F.3d at 1137. Commands given prior to the
4 use of deadly force are not enough to satisfy this requirement, there must be a
5 warning that the failure to comply would result in the use of deadly force. *See id.* at
6 1138. It is undisputed that, even though the deputies gave Chin repeated commands
7 to drop the gun, the deputies never gave Chin a verbal warning that they were
8 prepared to use deadly force if he did not comply with commands. A jury could
9 consider the lack of warning that deadly force could be used evidence of the
10 unreasonableness of their use of deadly force. *See id.* at 1137.

11 “Another relevant factor is ‘the availability of alternative methods of
12 capturing or subduing a suspect.’” *S.R. Nehad*, 929 F.3d at 1138 (citing *Smith*, 394
13 F.3d at 703). “[P]olice are required to consider what other tactics if any were
14 available, and if there were clear, reasonable and less intrusive alternatives to the
15 fore employed, that militates against finding the use of force reasonable.” *Id.*
16 (cleaned up). Here, as Vazquez conceded, if the incident had unfolded as Plaintiff
17 contends it did (which is supported by the video evidence), it would not be
18 appropriate to shoot and the deputies had the option to let the situation play out and
19 try to deescalate further. The deputies had the time and opportunity to do so as Chin
20 had not touched or manipulated the gun, and there were other deputies on scene and
21 responding to the scene that would allow them to set up a perimeter and utilize less-
22 lethal force alternatives.

23 B. The Deputies Were on Notice that Their Use of Deadly Force Against
24 Decedent Violated the Constitution

25 An officer is not entitled to qualified immunity where “(1) facts viewed in the
26 light most favorable to the injured party show that the officer violated a
27 constitutional right and (2) the right was clearly established at the time of the alleged
28 misconduct.” *Ford v. City of Yakima*, 706 F.3d 1188, 1192 (9th Cir. 2013) (citing

1 *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). A right is clearly established where its
2 “contours . . . [are] sufficiently clear [such] that a reasonable official would
3 understand that what he is doing violates that right.” *Anderson v. Creighton*, 483
4 U.S. 635, 640 (1987). This requires “cases relevant to the situation [the officer]
5 confronted,” *Brosseau v. Haugen*, 543 U.S. 194, 200 (2004), however it does “not
6 require a case directly on point,” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). In
7 considering existing precedent, the Court “may look at unpublished decisions and
8 the law of other circuits, in addition to Ninth Circuit precedent.” *Prison Legal News*
9 *v. Lehman*, 397 F.3d 692, 702 (9th Cir. 2005).

10 At the time of this June 2023 incident, “it was clearly established that officers
11 may not use deadly force against a person who is armed but cannot reasonably be
12 perceived to be taking any furtive, harrowing, or threatening actions...even in
13 circumstances in which the suspect has allegedly committed a violent crime in the
14 immediate past.” *N.E.M. v. City of Salinas*, 761 F. App'x 698, 700 (9th Cir. 2019)
15 (citing *Est. of Lopez by & through Lopez v. Gelhaus*, 871 F.3d 998, 1020 (9th Cir.
16 2017); *George*, 736 F.3d at 838; *Harris v. Roderick*, 126 F.3d 1189, 1203–04 (9th
17 Cir. 1997); *Curnow By & Through Curnow v. Ridgecrest Police*, 952 F.2d 321, 325
18 (9th Cir. 1991)) (cleaned up); see *Cole Estate of Richards v. Hutchins*, 959 F.3d
19 1127, 1134 (8th Cir. 2020) (“it was clearly established that a person does not pose
20 an immediate threat of serious physical harm to another when, although the person
21 is in possession of a gun, he does not point it at another or wield it in an otherwise
22 menacing fashion”).

23 In *Estate of Lopez v. Gelhaus*, the Ninth Circuit held that a reasonable jury
24 could find that the officer’s use of deadly force was not objectively reasonable
25 where the decedent was holding a rifle pointed down to the ground, the officer did
26 not warn the decedent that deadly force would be used, and the decedent did not
27 exhibit any aggressive behavior. 871 F.3d at 1013. In *George v. Morris*, the Ninth
28 Circuit held that even in a potentially volatile and dangerous situation, a reasonable

1 factfinder could conclude that the deputies' use of deadly force against a domestic
2 disturbance suspect who visibly held a gun trained on the ground and never
3 manipulated or pointed the gun at the deputies violated the Fourth Amendment. 736
4 F.3d at 833, 838, 839. Indeed, as this Court recognized in *Estate of Aguirre v.*
5 *County of Riverside*, 29 F.4th 624 (9th Cir. 2022), "*Morris* established that, even in
6 [tense and often explosive] situations, officers must not use deadly force against
7 non-threatening suspects, even if those suspects are armed." 29 F.4th at 630. In
8 *Harris v. Roderick*, the Ninth Circuit held deadly force to be unreasonable where the
9 suspect had committed a violent crime in the immediate past by shooting at police
10 officers and was armed at the time of the use of deadly force, but was not escaping
11 and had not made any threatening movement toward anyone. 126 F.3d at 1193,
12 1203, 1204. In *Curnow v. Ridgecrest*, the Ninth Circuit held that it was unreasonable
13 to use deadly force against a man who was not pointing a gun at the officers and was
14 not facing them at the time of the shooting. 952 F.3d at 325. More recently in
15 *Calonge v. City of San Jose*, the Ninth Circuit held that the law was clearly
16 established at the time of the 2019 incident that use of deadly force against a man
17 walking down the street with a gun in his waistband, who failed to follow
18 commands but did not make any threatening or furtive movement, violated the
19 Fourth Amendment. 104 F.4th at 46, 48. Additionally, "caselaw has made clear that
20 an officer violates the Fourth Amendment by shooting a person who had previously
21 injured someone but no longer posed an immediate threat." *Tan Lam v. City of Los*
22 *Banos*, 976 F.3d 986, 1001 (9th Cir. 2020). Lastly, Vazquez conceded that pursuant
23 to the deputies' training, it would be inappropriate to shoot Chin if the incident
24 happened as Plaintiff contends it did—where Chin was simply walking with the rifle
25 slung on his body and pointed down and never grabbed or raised the rifle, and never
26 turned towards Vazquez. *See Drummond ex rel. Drummond v. City of Anaheim*, 343
27 F.3d 1052, 1062 (9th Cir. 2003) (officers' training materials relevant to whether
28

1 they would have been on notice that the force employed was objectively
2 unreasonable).

3 Plaintiff submits that the cases discussed above clearly established Chin's
4 right to be free from unreasonable, deadly force at the time of this incident.

5 **V. DEFENDANT DEPUTIES ARE NOT ENTITLED TO SUMMARY**
6 **JUDGMENT ON PLAINTIFF'S STATE LAW CLAIMS**

7 A. Qualified Immunity Does Not Apply to Plaintiff's State Law Claims

8 Defendants contend that because the deputies are entitled to qualified
9 immunity (Plaintiff disputes that the defendant deputies are entitled to qualified
10 immunity), the deputies cannot be liable under Plaintiff's state law claims. However,
11 "California law is clear that the doctrine of qualified governmental immunity is a
12 federal doctrine that does not extend to state tort claims against government
13 employees" and that "qualified immunity does not apply to state civil rights claims."
14 *Cousins v. Lockyer*, 568 F.3d 1063, 1072 (9th Cir. 2009) (cleaned up) (citing
15 *Venegas v. County of L.A.*, 153 Cal. App. 4th 1230, 1243, 1226 (2007)). Moreover,
16 under Plaintiff's facts there is sufficient evidence for a jury to find that the deputies'
17 use of deadly force against Chin was excessive and unreasonable.

18 C. Defendants are Not Entitled to Summary Judgment on Plaintiffs' Battery
19 and Negligence Claims

20 The California Supreme Court "has long recognized that peace officers have a
21 duty to act reasonably when using deadly force." *Hayes v. Cnty. of San Diego*, 57
22 Cal.4th 622, 629 (2013). "[A]n officer's lack of due care can give rise to negligence
23 liability for the intentional shooting death of a suspect." *Munoz v. Olin*, 24 Cal. 3d
24 629, 634 (1979). California "state negligence law, which considers the totality of the
25 circumstances surrounding any use of []force, is broader than federal Fourth
26 Amendment law, which tends to focus more narrowly on the moment when []force
27 is used." *Hayes*, 57 Cal.4th at 639 (internal citations omitted). The totality of the
28 circumstances necessarily includes the officer's "tactical conduct and decisions

1 leading up to the use of []force.” *See id.* at 637-38. “Under California law, the
2 officer’s pre-shooting decisions can render his behavior unreasonable under the
3 totality of the circumstances, even if his use of deadly force at the moment of the
4 shooting might be reasonable in isolation.” *Tabares*, 988 F.3d at 1125 (citing
5 *Mendez v. Cnty. of Los Angeles*, 897 F.3d 1067, 1082–83 (9th Cir. 2018); *Grudt v.*
6 *City of Los Angeles*, 2 Cal.3d 575,587 (1970)); *see also Mulligan*, 835 F.3d at 991.

7 A state law claim for battery by a peace officer considers the “totality of the
8 circumstances,” which includes pre-force conduct as well as the use of force.
9 *McLeod v. City of Redding*, No. 2:22-CV-00585 WBS JDP, 2024 WL 3011227, at
10 *8 (E.D. Cal. June 12, 2024) (finding that the analysis on the state law battery claim
11 “requires the same ‘totality of the circumstances’ inquiry that applied to negligence
12 claims” including pre-shooting conduct); *Villalobos v. City of San Maria*, 85 Cal.
13 App. 5th 383, 389 (2022) (evaluating both battery and negligence claims against
14 police officers under the reasonableness standard articulated in *Hayes*); *Koussaya v.*
15 *City of Stockton*, 54 Cal. App. 5th 909, 937 (2020) (same)). Indeed, California Civil
16 Jury Instructions for battery by a peace officer (deadly force), CACI 1305B, and
17 negligent use of deadly force by a peace officer, CACI 441, instructs that the jury
18 may consider the officer’s “tactical conduct and decisions before using deadly
19 force.” CACI 441 and 1035B further states:

20 A threat of death or serious bodily injury is “imminent” when...a
21 person has the *present ability, opportunity, and apparent intent to*
22 *immediately* cause death or serious bodily injury to the peace officer or
23 another person. An imminent harm is not merely a fear of future harm,
24 *no matter how great the fear and no matter how great the likelihood of*
the harm, but is one that, from appearances, must be instantly
confronted and addressed.

25 CACI 441, 1305B (emphasis added).

26 As discussed above, *supra* Section IV.A., viewing the facts in the light most
27 favorable to Plaintiff, the deputies used excessive and unreasonable deadly force
28

1 against Chin as Chin did not pose an imminent threat of death or serious bodily
2 injury at any time immediately prior to or during the shots. Additionally, a jury
3 could find that Vazquez's poor tactical decision to leave cover, despite it being
4 feasible for cover in the form of Bronowicki's vehicle to position itself to allow
5 Vazquez to avoid crossfire, contributed to Vazquez's use of unnecessary, deadly
6 force.

7 D. Defendants are Not Entitled to Summary Judgment on Plaintiff's Bane Act
8 Claim

9 "The elements of a Bane Act claim are essentially identical to the elements of
10 a § 1983 claim, with the added requirement that the government official had a
11 'specific intent to violate' a constitutional right." *Hughes v. Rodriguez*, 31 F.4th
12 1211, 1224 (9th Cir. 2022). "[A] reckless disregard for a person's constitutional
13 rights is evidence of specific intent to deprive that person of those rights." *Reese v.*
14 *Cnty. of Sacramento*, 888 F.3d 1030, 1045 (9th Cir. 2018). As discussed above, the
15 deputies used excessive and unreasonable force against Chin. The deputies acted
16 with reckless disregard for Chin's constitutional rights when they used deadly force
17 against Chin, despite Chin not posing a threat of death or serious bodily injury at the
18 time of the volleys of shots.

19 **VI. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests the Court deny
21 Defendants' Motion for Summary Judgment, or Partial Summary Judgment as to the
22 claims discussed above.

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1 DATED: October 13, 2025

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